

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VOTER REFERENCE FOUNDATION,
LLC,

Plaintiff,

v.

Case No: 1:22-cv-00222-JB-KK

RAUL TORREZ¹, in his official capacity as
New Mexico Attorney General, and MAGGIE
TOULOUSE OLIVER, in her official capacity
as
New Mexico Secretary of State,

Defendants.

**RESPONSE OF DEFENDANT SECRETARY OF STATE MAGGIE TOULOUSE OLIVER, IN HER
OFFICIAL CAPACITY, TO PLAINTIFF VOTER REFERENCE FOUNDATION'S SECOND
INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION**

Pursuant to Rules 33, 34, and 36 of the Federal Rules of Civil Procedure, Defendant Maggie Toulouse Oliver, in her official capacity as New Mexico Secretary of State ("The Secretary"), responds to Plaintiff Voter Reference Foundation's Second Interrogatories, Second Requests for the Production of Documents, and Second Requests to Admit ("Plaintiff's Second Set of Discovery"). The Secretary's responses shall be without prejudice to any objections he may have to the relevance or admissibility of any response at any hearing, trial, or on summary judgment in this Action. The Secretary's investigation and development of all facts and circumstances related to this Action is

¹ Pursuant to Fed. R. Civ. P. 25(d), Raul Torrez is substituted for Hector Balderas as New Mexico Attorney General.

INTERROGATORY NO. 5 (mis-numbered as 1)³: State Your basis for denial of any and all of VRF's First and Second Requests for Admission.

Response:

The Secretary objects to Interrogatory No. 5 as vague and ambiguous as it does not clearly indicate to which Request for Admission it is seeking a response and is effectively a compound interrogatory seeking answers to multiple questions about different requests for admission. Without waiving, and subject to the foregoing General and Specific Objections, the Secretary refers to its responses to every Request for Admission thus responded to, and, as it has denied only Request for Admission No. 2, references that Response only.

As to RFA No. 2, the Secretary restates her objection to RFA No. 2 as calling for the Secretary to make a legal conclusion. Subject to, and without waiving the foregoing General and Specific Objections, the Secretary restates this response; the Secretary does not believe sharing data *alone*, without more context or information about the sharing necessarily constitutes a violation of New Mexico law based on the Secretary's reading of NMSA 1978, Section 1-4-5.5(C).

INTERROGATORY NO. 6 (mis-numbered as 2): Identify Your basis for denial of any and all of VRF's requests for voter information.

Response:

The Secretary objects to Interrogatory No. 6 as seeking information already within Plaintiff's possession, custody, or control. The Secretary has identified the basis for denial of any and all of VRF's requests for information in writing.

³ Plaintiff restarted each request in the second set with number "1." To avoid confusion, Defendants have renumbered using sequential numbering and referenced the original number for clarification.

Subject to, and without waiving the foregoing General and Specific Objections, the Secretary restates, in part, the basis for her denial as stated in a letter from the Secretary to Gina Swoboda, dated November 17, 2022: “Therefore, due to the nature of your request, the ongoing litigation, your past practice of posting this data online, and the fact that such a request is not accompanied by the required affidavit, our office is unable to process your request at this time.”

INTERROGATORY NO. 7 (mis-numbered as 3): Identify any and all misinformation, including regarding the 2020 General Election, You believe VRF has or intends to spread on its website, VoteRef.com.

Response:

The Secretary notes that discovery is ongoing and more facts may be ascertained that are currently unknown to the Secretary. Accordingly, the Secretary reserves the right to supplement this response.

The Secretary believes that publication of voter data writ large may constitute misinformation. The New Mexico voter file is a living document that is constantly updated by state and county agencies. If a private individual or entity were to obtain a copy of the voter file, that copy would be out of date and bearing erroneous information before the private individual or entity even had a chance to publish the copy. The only proper, accurate way to look up voter information is through the New Mexico Secretary of State or county clerks.

INTERROGATORY NO. 8 (mis-numbered as 4): Identify what “non-personal” data You believe VRF will publish online absent a court order.

Response:

RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 3 (mis-numbered as 1):

Admit that if a party requests and received voter data from New Mexico, and the requesting entity then posts that data on the internet, Your position is that the publication of that data on the internet constitutes a violation of New Mexico law, regardless of the purpose for which the voter data is shared.

Response:

The Secretary objects to Request for Admission No. 3 as calling for the Secretary to make a legal conclusion. The Secretary further objects to this Request for Admission as vague, as no definition of “publication” was provided.

Without waiving and subject to the foregoing General and Specific Objections, the Secretary Admits RFA No. 3.

REQUEST FOR ADMISSION NO. 4 (mis-numbered as 2):

Admit that You believe VRF has violated New Mexico election law by publishing New Mexico voter information on the internet.

Response:

The Secretary objects to Request for Admission No. 4 as calling for the Secretary to make a legal conclusion.

Without waiving, and subject to the foregoing General and Specific Objections, the Secretary Admits RFA No. 4.

Without waiving, and subject to the foregoing General and Specific Objections, *see* Bates Nos. SOS 00039-00042.

Respectfully submitted,

By: /s/ Jeff D. Herrera

Erin Lecocq

Jeff D. Herrera

Office of the New Mexico Attorney General

408 Galisteo Street

Santa Fe, NM 87501

Tel.: (505) 490-4060

Fax: (505) 490-4881

elecocq@nmag.gov

jherrera@nmag.gov

Counsel for Defendants